

1	UNITED STATES DISTRICT COURT	
	MIDDLE DISTRICT OF TENNESSEE	
2	-----x	
	L.E., by his next friends	
3	And parents,	*
4	Plaintiff,	*
5	V.	*
6	BILL LEE, in his official	*
	Capacity as Governor of	
7	Tennessee; PENNY SCHWINN,	*
	In her official capacity as	
8	The Tennessee Education	*
	Commissioner; TENNESSEE	
9	STATE BOARD OF EDUCATION;	*
	SARA HEYBURN MORRISON in	
10	Her official capacity as	*
	The executive Director of	
11	The Tennessee State Board	*
	Of Education; NICK DARNELL	
12	MIKE EDWARDS ROBERT EBY	*
	GORDON FERGUSON, ELISSA,	
13	KIM LILLIAN HARTGROVE,	*
	NATE MORROW, LARRY JENSEN	
14	DARRELL COBBINS, and EMILY	*
	HOUSE, the individual	
15	Members of the Tennessee	*
	State Board of Education,	
16	In their official	*
	Capacities; KNOX COUNTY	
17	BOARD OF EDUCATION a/k/a	*
	KNOX COUNTY SCHOOLS a/k/a	
18	KNOX COUNTY SCHOOL	*
	DISTRICT; ROBERT M. "BOB"	
19	THOMAS, in his Official	*
	Capacity as Director of	
20	Knox County Schools,	*
21	Defendants.	*
	-----x	

DEPOSITION OF SARA MORRISON
APPEARING REMOTELY FROM
NASHVILLE, TENNESSEE

August 22, 2022

11:00 a.m.

REPORTED BY:

Dawn L. Halcisak, CLR

APPEARING REMOTELY FROM CRISFIELD, MARYLAND

R E M O T E A P P E A R A N C E S

ON BEHALF OF PLAINTIFF KNOX COUNTY BOARD OF

EDUCATION AND BOB THOMAS:

JESSICA JERNIGAN-JOHNSON, ESQUIRE

KNOX COUNTY LAW DIRECTOR'S OFFICE

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SASHA BUCHERT, ESQUIRE

(pro hac vice forthcoming)

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R E M O T E A P P E A R A N C E S (Cont'd.)

ON BEHALF OF L.E., by his next friends and
parents SHELLEY ESQUIVEL and MARIO ESQUIVEL
& ACLU OF TENNESSEE:

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R E M O T E A P P E A R A N C E S (Cont'd.)

ALSO PRESENT:

FOR KNOX COUNTY LAW DIRECTOR'S OFFICE:

Bob Thomas, Director of Knox County Schools
Coach Donald Dodgen

ATTORNEY GENERAL'S OFFICE:

Anne Levit

Mr. Swaine

Executive Director Morrison

State Board Members

Veda Newman, Law Clerk

Lucas Cameron-Vaugh, ACLU

VERITEXT:

Jerry CUrran, Concierge Tech

I N D E X

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MR. SCHOENFELD	6

E X H I B I T S

(Premarked for Identification and
attached to the Transcript.)

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R E M O T E P R O C E E D I N G S

IT IS HEREBY STIPULATED AND AGREED that the reading and signing of this deposition are not waived.

THE REPORTER: Good morning, everyone.

The attorneys participating in this deposition acknowledge that I am not physically present in the deposition room and that I will be reporting this deposition remotely. They further acknowledge that, in lieu of an oath administered in person, the witness will verbally declare his or her testimony in this matter is under penalty of perjury. The parties and their counsel consent to this arrangement and waive any objections to this manner of reporting.

Please indicate your agreement by stating your name, whom you represent, and your agreement on the record, beginning with counsel noticing the deposition.

MR. SCHOENFELD: Good morning. Alan

1 Schoenfeld of Wilmer Cutler Pickering Hale and
2 Dorr for the Plaintiffs, joined by John O'Toole,
3 and we agree to the stipulation.

4 MS. BERMEYER: Good morning. This is
5 Stephanie Bermeyer for the Tennessee State Board
6 of Education, and we agree. And also with me is
7 Angela Sanders. She's general counsel for the
8 State Board of Education.

9 MS. JERNIGAN-JOHNSON: My name is
10 Jessica Jernigan-Johnson. I'm here with my
11 colleague David Sanders on behalf of the Knox
12 County Board of Education and Bob Thomas, and we
13 agree to the stipulation.

14 THE REPORTER: Okay. Is everyone else
15 just going to be present? Mr. Travis? Yep.
16 And Mr. Shantel?

17 MR. SCHOENFELD: Yeah. It's just me
18 and John for the Plaintiffs.

19 THE REPORTER: Okay. Great. Okay. So
20 with that --

21 MS. BERMEYER: Mr. Travis Herrera.

1 He's also with the Attorney General's Office.

2 Sorry, John.

3 MR. NEWKIRK: No, no problem.

4 THE REPORTER: Okay. great.

5 (Off record discussion.)

6 THE REPORTER: And might I ask the
7 witness, can I just ask you your city and state,
8 just for the record; where are you located?

9 THE WITNESS: Sure. Nashville,
10 Tennessee.

11 THE REPORTER: Okay. Great. And
12 ma'am, can I ask you to retrieve your government
13 identification. I'm going to ask you to hold
14 that up to the video monitor for verification.
15 If you don't have it with you, counsel can put a
16 stipulation on the record that the person before
17 the video is, in fact, the person on the
18 deposition notice.

19 (Off record discussion.)

20 THE REPORTER: Counsel, you want to
21 place a stipulation on the record?

1 MS. BERMEYER: Yes. I stipulate, for
2 the record, that the person here in the room
3 with me is the Executive Director, Sarah
4 Morrison for the Tennessee State Board of
5 Education.

6 THE REPORTER: Okay. Great. Perfect.
7 And with that, ma'am, will you please
8 hold up your right hand for me this morning?

9 SARA MORRISON,
10 having been duly sworn, was examined, and did
11 testify as follows:

12 THE WITNESS: I do.

13 THE REPORTER: Please state your name,
14 ma'am, and spell your name for the record.

15 THE WITNESS: Sara Morrison, S-a-r-a,
16 M-o-r-r-i-s-o-n.

17 THE REPORTER: Okay. Great. Thank
18 you.

19 Counsel, I am going off the video --
20 please begin. I'm going off the video monitor,
21 but I am here.

1 Q. And where does the state board of
2 education's funding come from?

3 A. Purely from the general assembly.
4 State funds.

5 Q. Does that include allocation of
6 non-state funds, or is it purely funded by state
7 dollars?

8 A. It is purely funded by state dollars --
9 the operation of the Board.

10 Q. And the Board has certain
11 responsibilities, with respect to the
12 expenditure and allocation of the federal funds;
13 is that right?

14 A. No, that is not correct. We do not
15 receive federal funds for the operations of the
16 state board.

17 Q. I'm asking a different question.

18 In setting policy and -- and setting
19 policy for Tennessee public schools, the state
20 board of education includes in the allocation of
21 funding, that is for the state board policy for

CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC

I, Dawn L. Halcisak, Court Reporter and
Notary Public in and for the State of Maryland,
the officer before whom the foregoing Remote
Deposition was taken, do hereby certify that the
foregoing transcript is a true and correct
record of the testimony given; that said
testimony was taken by me stenographically and
thereafter reduced to typewriting under my
direction and that I am neither counsel for,
related to, nor employed by any of the parties
to this case and have no interest, financial or
otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set
my hand and affixed my notarial seal this 7th
day of September 2022.

My commission expires:

At



NOTARY PUBLIC IN AND FOR THE
STATE OF MARYLAND

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

**Exhibit
0001**

8/22/2022

Sara Morrison Ph.D.

L.E., by his next friends and parents,
SHELLEY ESQUIVEL and MARIO
ESQUIVEL,

Plaintiff,

v.

BILL LEE, et al.,

Defendants.

Case No. 3:21-cv-00835

Chief Judge Waverly D. Crenshaw Jr.
Magistrate Judge Alistair E. Newbern

**PLAINTIFF'S NOTICE OF 30(b)(6) DEPOSITION
OF DEFENDANT TENNESSEE STATE BOARD OF EDUCATION**

Pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Plaintiff L.E., by his next friends and parents, Shelley Esquivel and Mario Esquivel, through the undersigned counsel, provides notice that Plaintiff will take the deposition of Defendant the Tennessee State Board of Education (address 500 James Robertson Parkway, Nashville, TN 37243) with respect to the topics set forth below.

The deposition will take place on July 22, 2022, at 9:30 AM CDT, or at another such date and time agreed upon by the parties. The deposition will be conducted remotely via video teleconference offered by Veritext. The deposition will continue from day to day until concluded. The deposition will be taken under oath before a certified shorthand reporter or other officer authorized to administer oaths. The deposition will be recorded by stenographic means, on videotape, and by instant visual display of testimony using LiveNote or similar software. The deposition shall be used for discovery purposes and may be used as evidence in this action, including at trial.

Plaintiff reserves the right to seek relief from the court in the event that the designated deponent is not properly prepared to testify on behalf of the Tennessee State Board of Education.

Pursuant to Rule 30(b)(6), Defendant Tennessee State Board of Education shall designate one or more knowledgeable officers, directors, managing agents, or other persons who consent to testify on their behalf concerning the subjects set forth in Exhibit

A. Prior to deposition, Defendant Tennessee State Board of Education and Plaintiff shall meet and confer about the matters for examination.

Dated: July 8, 2022

Respectfully submitted,

/s/ Stella Yarbrough
Stella Yarbrough (No. 33637)
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***Attorneys for Plaintiff L.E., by his next
friends and parents, Shelley Esquivel and
Mario Esquivel***

Exhibit A

DEFINITIONS

1. “ACTION” refers to the above-captioned litigation instituted by L.E. on November 4, 2021.
2. “L.E.” means L.E. and his next friends and parents, Shelley Esquivel and Mario Esquivel.
3. “COMMUNICATION” means any transmission of information from one PERSON to another by any means in the form of facts, ideas, inquiries, or otherwise.
4. “CONCERNING” is defined as information, things, COMMUNICATIONS, or DOCUMENTS that reflect, relate to, identify, constitute, embody, describe, discuss, summarize, evidence, reference, comment on, or concern in any way the subject matter of the Topic.
5. “DOCUMENT” means any written, printed, typed, recorded, magnetic, punched, copied, graphic or tangible thing in, upon, or from which information may be embodied, translated, conveyed, or stored (including, but not limited to, correspondence, memoranda, notes, records, books, papers, telegrams, telexes, dictation or other audio tapes, video tapes, computer tapes, computer discs, computer printouts, microfilm, microfiche, worksheets, diaries, calendars, photographs, charts, drawings, sketches, and all other writings or drafts thereof) as defined in Federal Rule of Civil Procedure 34(a), Federal Rule of Civil Procedure 45, and Federal Rule of Evidence 1001, whether or not labeled "confidential." A draft or non-identical copy is a separate DOCUMENT within the meaning of this term.

6. INTERSCHOLASTIC SPORTS means athletic competitions between students of schools at all educational levels, including but not limited to elementary school, middle school, high school, and college.
7. “PERSON” means any natural person or any business, legal, or governmental entity or association or any other cognizable entity, including, without limitation, corporations, proprietorships, partnerships, joint ventures, consortiums, clubs, associations, foundations, governmental agencies or instrumentalities, societies, and orders.
8. “POLICY” means any policy, procedure, rule, protocol, guideline, regulation, practice, or other principle or course of action.
9. “STATE BOARD” means the Tennessee State Board of Education, as well as its officers, directors, employees, partners, corporate parent, subsidiaries, affiliates, attorneys, accountants, consultants, representatives, and agents.
10. “STATE EXECUTIVE DIRECTOR” means Sara Heyburn Morrison in her official capacity as Executive Director of the State Board and includes each of the officers, directors, employees, partners, corporate parent, subsidiaries, affiliates, attorneys, accountants, consultants, representatives, and agents that report to her in her official capacity. It also means any "Person" who assumes any of Ms. Heyburn Morrison’s official positions or responsibilities in part, whether temporarily or permanently.
11. “TENNESSEE DEPARTMENT OF EDUCATION” means the Tennessee Department of Education, as well as its officers, directors, employees, partners,

corporate parent, subsidiaries, affiliates, attorneys, accountants, consultants, representatives, and agents.

12. “YOU,” “YOUR,” or “YOURS” means the STATE BOARD and the STATE SUPERINTENDENT collectively.
13. “S.B. 228” means Tennessee House Bill 3 of the 2021-2022 112th General Assembly, Tennessee Senate Bill 228 of the 2021-2022 112th General Assembly, or any implementing Policy thereunder.
14. “FEDERAL FINANCIAL ASSISTANCE” means the definition of “Federal financial assistance” provided in 34 C.F.R. § 106.2(g).

TOPICS OF EXAMINATION

TOPIC 1:

The organization and structure of the STATE BOARD, including current employees and former employees of the STATE BOARD who were employed January 1, 2019, onward but since departed, their positions, and the scope of their responsibilities, including the role and responsibilities of the STATE EXECUTIVE DIRECTOR.

TOPIC 2:

YOUR POLICIES, DOCUMENTS, and COMMUNICATIONS concerning rulemaking.

TOPIC 3:

The funding of the STATE BOARD, including any federal funding received by the STATE BOARD and how such federal funding is used.

TOPIC 4:

YOUR POLICIES, DOCUMENTS, and/or COMMUNICATIONS CONCERNING YOUR control, supervision, or authority over INTERSCHOLASTIC SPORTS in Tennessee.

TOPIC 5:

YOUR current and/or expected role in implementing and enforcing S.B. 228, including any delegation of authority to or supervision over the Tennessee Secondary School Athletic Association, Tennessee county boards of education, and/or county superintendents.

TOPIC 6:

The relationship between the STATE BOARD and county boards of education in Tennessee.

TOPIC 7:

The relationship between the STATE BOARD and the Tennessee Secondary School Athletic Association.

TOPIC 8:

The relationship between the STATE BOARD and the TENNESSEE DEPARTMENT OF EDUCATION.

TOPIC 9:

Any FEDERAL FINANCIAL ASSISTANCE received by the STATE BOARD, either directly or indirectly.

TOPIC 10:

Any FEDERAL FINANCIAL ASSISTANCE received by the TENNESSEE DEPARTMENT OF EDUCATION, either directly or indirectly.

TOPIC 11:

YOUR relationship and COMMUNICATIONS with the Tennessee Legislature, including individual legislators, legislative staff, Committees, and/or Committee staff, in developing, drafting, passing, and/or implementing S.B. 228.

TOPIC 12:

YOUR POLICIES, DOCUMENTS, AND COMMUNICATIONS CONCERNING the participation of transgender students in INTERSCHOLASTIC SPORTS in Tennessee from January 1, 2019, to the present.

TOPIC 13:

YOUR POLICIES, DOCUMENTS, AND COMMUNICATIONS CONCERNING the separation of boys and girls in INTERSCHOLASTIC SPORTS in Tennessee prior to and following the passage of S.B. 228.

TOPIC 14:

YOUR understanding CONCERNING the purpose, scope, and implications of S.B. 228. This expressly includes YOUR understanding of what, if any, governmental interests are furthered by S.B. 228.

TOPIC 15:

YOUR POLICIES, DOCUMENTS, AND COMMUNICATIONS CONCERNING L.E. and his family from January 1, 2019, to the present.

TOPIC 16:

YOUR POLICIES, DOCUMENTS, AND COMMUNICATIONS CONCERNING S.B. 228.

TOPIC 17:

The funding of the STATE BOARD, including any federal funding.

TOPIC 18:

All YOUR discovery responses provided to date in this ACTION.